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AUTHOR Thorpe, Judie Mosier; Crouse, Janice Shaw
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ABSTRACT

A moot court program developed for undergraduate debaters at Ball State University (Indiana) is presented. Following a brief introduction that establishes the benefits of such a program for the students and the department of communication, the first section of the paper explains how the moot court concept was modified to emphasize communication skills. The next three sections describe the steps taken by the students involved in the competition, present the actual procedures on the day of the event, and list the responsibilities of the various participants, including the debate coaches and volunteer lawyers. The paper's last two sections suggest possible improvements in the program and affirm the value of the moot court as an enriching educational experience. A bibliography is provided, and the appendixes include detailed descriptions of past exercises and the actual materials used for the program. (JL)

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"ADVOCACY IN THE COURTROOM: THE MOOT COURT"

by

Judie Mosier Thorpe

and

Janice Shaw Crouse

BALL STATE UNIVERSITY

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INTRODUCTION

Former Supreme Court Justice Tom Clark suggested in 1975 that communication scholars could help improve the quality of justice and the efficiency of the court system by providing legal practitioners with knowledge that would improve their ability to adequately represent their clients and reduce the amount of trial time consumed by what could be labeled a communicative "shotgun" approach . . .[1] Justice Clark further observed:

> Most trial attorneys are knowledgeable of the law. Many, however, don't communicate well in the courtroom. They don't know what kinds of techniques influence a judge or jury, so they try all sorts of things and take up a lot of time sometimes getting both themselves and their clients in trouble.[2]

Perhaps even more startling is Chief Justice Warren Burger's remark that indicated that anywhere from 25 percent to 75 percent of all practicing lawyers are ill-qualified in basic skills.[3] We agree with Justice Clark in realizing the importance of communication skills for the lawyer. Pincus' survey of law students in 1975-76 found that only 24 percent took courses which would focus on practical skills.[4] In the late 70's a survey of law schools showed that 86 schools wanted to include communication skills in their curriculum,[5] but numerous schools prefer that communication skills be mastered before entering law school.[6] Many pre-law

students find programs in debate an excellent training ground for such skills. In a survey of lawyers in California, 39 percent of those interviewed had been on debate teams and 90 percent of those who had participated cited positive value in their experiences.[7]

Taking into account the words of Justices Clark and Berger and the above-mentioned studies, the Ball State Debate program has initiated a Moot Court. This advocacy activity has provided some unique advantages for our students, our department and our community. For example, the Moot Court has provided our pre-law members of the intercollegiate squad an opportunity to focus and adapt their debate and cross-questioning techniques to the courtroom format. In addition to the experienced debater, newcomers with little or no high school debate background can gain seasoning and exposure to advocacy before they are introduced to the rigors of the intercollegiate debate circuit.

Besides benefits to the student, a department of communication can also benefit. With the uncertainties of the present economy, a department of communication will discover that low-cost or cost-free activities are desirable. Indeed, Jospeh Wenzel states that, "An objective review of current forensic activities should lead to some sense of urgency about developing campus and community programs."[8] While we would not claim urgency, we would cite definite advantages. A Moot Court activity provides linkages to other departments such as political science, criminal justice and pre-law programs. Additionally, the Moot Court adds visibility for the department

by the very nature of its on-campus setting and audience. This visibility can and often does extend to the community. In particular, our paradigm at Ball State utilizes local and area attorneys who advise, critique, and even offer their law libraries for research. The interaction between students and the lawyers encourages and enhances community bonds.

With this overview of the advantages of a Moot Court activity, it will be the purpose of this paper to develop the specific components of the Ball State paradigm. First, we will look at how the concept was developed, the time-requirements and the special characteristics that have been advanced. Second, we will present the actual steps of preparation with the students. Third, we will discuss the administrative details of the event itself along with some suggestions that have evolved as the paradigm has developed. Finally, we will advance suggestions for future Moot Court activities.

CONCEPT DEVELOPMENT

James McBath attributes the development of the mock-trial debate format in 1939 to Warren A. Guthrie of Western Reserve University. Apparently Guthrie's original concept was an attempt to find a debate format that would retain audience interest by involving all class members and utilizing the national debate proposition.[9]

In reviewing the existing literature on Moot Court or Judicial Debate (see Bibliography), it is readily apparent that Moot Court has either been set aside as a law school activity or watered down to a classroom assignment for the debate or argumentation course. For example, Introduction to Advocacy,[10] by the Board of Student Advisors of the Harvard Law School carefully delineates arguing an appellate case before a tribunal of knowledgeable judges. Certainly this is far too complex for the undergraduate speech student or pre-law major who has not had in-depth course work in the law. On the other hand, a number of debate textbooks do make passing reference to judicial debate, mock trial or moot court. However, these references are usually definitional, as opposed to explicative, and often are no more than one page in length.

Realizing the rich potential for advocacy experiences that a Moot Court activity could provide, the Ball State squad started researching and observing the activity in the fall of 1980. We first visited the Moot Court at Indiana University School of Law in Indianapolis where former Ball State debaters participated on the Moot Court team. Discussion with these students as well as a survey of Ball State alumni attorneys or former collegiate debaters who resided in the area suggested the creation of a unique format that would closely approximate the actual trial procedure but would place the emphasis upon the communication aspects of the trial, as opposed to the legal intricacies.

Specifically, the model that was designed for the Ball State Moot Court (See Appendix I and II for actual programs) divides

the activity into four separate sections. They are: opening of the trial which permits the defense and prosecution eight minutes each to develop the elements of the case; examination of witnesses which allocates ten minutes total time for the prosecution as well as the defense to examine and cross-examine each witness; closing of the trial which provides seven minutes for the prosecution and seven minutes for the defense to follow the real-life procedures of an actual trial, and finally, lawyer/advisor critiques. In sum, a total of thirty minutes is available for each side which may be divided up as the attorneys desire. For example, if one side only uses six minutes for their opening remarks, they will get two minutes added to their examination period to provide some flexibility in timing.

Since we are emphasizing the communication aspects of the trial, three additional factors have been developed in our paradigm. They are: first, our jurors are pre-selected to eliminate that time-consuming step in the real-life process; second, a guilty or not-guilty verdict is rendered by both the jury and the general audience (See Appendix III for the forms which we utilize); and third, a critiquing session by the attorneys follows the actual Moot Court presentation. We found that pre-selecting the jury was a time saver, but furthermore, it permitted us to select interested students. We accomplished this by simply sending a flyer to the political science, history, criminal justice classes. Students from these classes called us prior to the event and were put on the jury panel.

After the Moot Court closing remarks, the jury is sequestered to register their guilty or not-guilty ballot and the general audience is polled using the same ballot form. Our jury is instructed to take one initial vote and to return to the courtroom with the tally of votes for each position indicated if no consensus is reached. Prior to the critique session, the jury vote and the audience vote is announced. Interestingly, we discovered that following Moot Court #1, our audience and jury had differing opinions of the verdict whereas both audience and jury agreed with each other following Moot Court #2.

If the audience wishes to remain for the critique session, they are invited to do so, however, the critique session is specifically included to improve the student advocate's understanding of the courtroom processes and to improve his performance in terms of the communication skills directly relevant to the courtroom situation. Essentially, the nature of these critiques has been to praise qualities that the practicing attorneys felt were successful, to make suggestions as to approaches that might have been more successful, and to identify approaches that would never be acceptable or desirable in an actual court of law. In our experience, we have observed the attorneys utilizing sample cases that they had argued to exemplify their suggestions. By and large, the critique sessions have proven to be very beneficial. We have always used three attorneys, and each one adds his own perspective, sometimes disagreeing with the other lawyers, but nonetheless, showing the debater the real world he will be entering. Sometimes

the lawyer's advice centers on stylistic matters as well as issues. For example, following Moot Court #1, a promising pre-law student was advised to not sit at a table while he was questioning a witness, but rather to position himself between his witness and jury so that he could make use of the feedback of the jury. This suggestion, from a former debater who is now a prosecuting attorney, is a small example of the practical emphasis that our paradigm does provide.

In summary, the specific aspects that our paradigm advances have been the flexible time requirements, the pre-jury selection, the utilization of the audience as well as the jury in terms of rendering a verdict, and the critique session by the practicing attorneys. Further, it should be noted that our Moot Court is unique in one further important way. Our debaters create and construct their own scenario with the help of the attorney-advisors.

STUDENT PREPARATION

Once the concept is firmed up, the student involvement becomes the most demanding and time-consuming aspect of the entire Moot Court. This area has the following steps in chronological order: call-outs, case selection and scenario development (See Appendix IV and V), selection of theatre students to play the part of the witnesses, assignments to either prosecution or defense, and case construction which includes four steps: 1) preparation of opening statements, 2) cross-examination questions, 3) deposition writing of witnesses who will not be subpeoned, and 4) developing strategies

for the closing remarks.

After call-outs have taken place, it is very important to bring in the lawyer in the first meeting. The purpose of this meeting is to select a case area; for example, for Moot Court #1, our students decided to try a burglary case and for Moot Court #2, they opted for a rape case. The lawyer will need to explain the elements of the case, actually citing the language of the criminal codes so that the debaters will know exactly what needs to be proven for a verdict of guilty. After this is determined, our paradigm is designed to balance the scenario in such a way that both the prosecution and the defense have an equal opportunity to secure a guilty verdict. Simply put, an element of circumstantial evidence is introduced. Since we create our own scenario, attempting to balance the elements, the debaters have no way of knowing whether the plaintiff is guilty or innocent. It will be the jury and audience verdict which will make that decision. For example, in Moot Court #2, the rapist was identified by voice since he had a distinct English accent, however, we determined that a number of international students on campus also had English accents and could have committed the crime. Incidentally, in Moot Court #2, the prosecution team convinced the jury that circumstantial evidence was sufficient to prove guilt.

After the scenario is developed, the debaters select the side they wish to argue. It is easy to use three or four debaters on each side, dividing up the tasks of opening remarks, and cross-questioning, according to their interests and expertise. We discovered that it was advisable to place our most experienced debaters

as the anchor in charge of the closing remarks since this required the strongest rebuttal skills.

After the debaters have formed into teams, meetings can be scheduled to work on either prosecution or defense and the actors can be brought in to gain familiarity with the scenario and be questioned.

Approximately two weeks before the Moot Court is presented, advisors should meet with the debaters to evaluate their progress. The advisor can get a preview of the trial from these materials, briefs, and sample questions.

A few days before the actual court, a run-through can be scheduled to time the event and give the students some practice for confidence and clarity. At this time, courtroom courtesy can be stressed and a simple list of objections can be advanced. We use Sayre's four objections: 1) irrelevant question, 2) leading question, 3) repetitious question, 4) argumentative question.[11]

We run the defense practice with the actors and advisors present and the prosecution practice runs the same way; however, to keep the paradigm as realistic as possible, we do bar the opposing team from sitting in on the practice.

In summary, we have discovered that six weeks is adequate preparation time. We meet with the teams two hours a week and coach individually beyond that. On their own time, the debaters prepare their cases by researching in an attorney's office or in the local courthouse law library since our university does not have a law

school. Beyond this, they meet together as defense or prosecution teams to prepare questions or strategies.

The biggest problem that we discovered was finding a mutually convenient meeting time. Hopefully, as we work more with the activity, we can preschedule the Moot Court times in advance of call outs so that the interested students can plan their schedules and work around the Moot Court schedule.

ADMINISTRATION OF THE MOOT COURT EVENT

The Moot Court opens with an announcement of the judge's arrival by the bailiff. We use a local lawyer as the presiding judge and after his arrival the judge gives instructions to the jury and opens the court. Each attorney presents opening statements. The prosecuting attorney is the first with the defense attorney following. The attorneys are given a total of eight minutes for their presentations and any time not used in the opening statements can be utilized in later portions of the trial. As advisors, we have found that good opening statements require careful coaching.

The second major section of the Moot Court agenda is the examination and cross-examination of witnesses. The prosecution is allowed ten minutes to examine each witness and immediately following the prosecution examination the defense is allowed five minutes for cross-examination. One of the major responsibilities of the debate coach and the lawyer-advisors is to prepare the student attorneys for adequate and effective questioning. The defense is

allowed to present their witnesses and follow the same procedure as the prosecution. The defense has ten minutes to question each witness with the prosecution following with five minutes of cross-examination.

The closing of the trial consists of closing remarks from both the prosecuting attorney and the defense attorney with the judge's final instructions to the jury. The jury is sequestered in a nearby room and their instructions are to vote on the guilt or innocence of the defendant and their first vote is taken as the final vote; they do not have to reach consensus. In the interest of time, the first vote is brought back as quickly as possible to the audience and the judge announces both the jury vote and the audience results and presents the verdict to the audience.

As mentioned previously, the final aspect of the Moot Court is a critiquing session for the student participants. The lawyer-advisors give verbal critiques which are thorough and helpful. The audience is invited to remain, but there is usually only a group of 15-20 who remain and that gives a small seminar atmosphere to the critiquing session which enables the participants to ask questions and respond to the lawyer/advisors.

RESPONSIBILITIES FOR THE EVENT

Administrative Responsibilities. Appendix VI has a check list of items in sequence which must be attended to by the debate coach prior to the Moot Court experience. Obviously, the event requires numerous hours and considerable responsibility, but the details

could be taken care of by graduate assistants or advanced debaters. We have found that student response is such that a large room is required for the event. An auditorium-type lecture room with a small stage-like area which has plenty of room for the judge and witnesses and attorneys is necessary. We generally use the first couple of audience rows for the jury, but it would be nice to have an area large enough to seat the jury in view of the audience and where they would be addressed more effectively by the attorneys.

We think that having a printed program is encouraging to the participants and gives dignity to the event. We also tried to include everyone's name in the program as a small reward for participation.

Publicity is a major responsibility which could be shared by several people to minimize the time demands. We found that by duplicating the posters we could give each participant several copies to place around campus. In that way, posters were distributed to areas that the coaches might not frequent, but which students would be sure to see. One vital and effective means of publicity was to let colleagues be aware of the topic, the participants and the nature of the event by distributing the printed programs early in the week of the event. This provided a last minute reminder of the event.

We have found that colleagues are appreciative of the fact that immediately after an event we put in their mailbox a list of the students from their classes who attended the program. We feel that

this consideration builds goodwill and encourages future participation.

Another administrative responsibility which should not be overlooked is presenting some recognition of the contribution of the lawyer/advisors. We have printed up a certificate which we present to each lawyer/advisor as a way of saying thank-you. (See Appendix VII.) We have in the past mailed these out the day following the event with an accompanying letter of appreciation, but a suggestion might be to have a formal presentation by the student attorneys following the critique sessions.

Advocacy Responsibilities. The first and major responsibility of the debate coach is to see that the case which is developed has balance which would preclude an obvious decision of guilty or not guilty. There is a major effort with the lawyer/advisors to load the evidence and witnesses and design the case so that there is equal probability (possibility) of a decision in either direction. We also found that it was important to keep tabs on the line of questioning lest the student attorneys bring out information which would change the facts of the case. For instance, in the rape case (Moot Court #2) we had agreed that the only direct evidence of identity of the defendant would be the voice, but in questioning the witness stated that she had actually seen the defendant up close. This, of course, was strong evidence for the prosecution and tilted the case in their direction.

Critic-Lawyer Responsibilities. It is important when contacting local lawyers that the debate coach focus the responsibilities in such a way that the attorney is aware of his role, the amount of time required, and the expertise that will be needed. We suggest that a time estimate be given and an idea of the kind of participation which would be expected. Certainly, the lawyer is giving of time and expertise and should be accorded the respect of a clear understanding of his relationship to the event and the participants.

SUGGESTIONS FOR FUTURE MOOT COURT ACTIVITIES

After working with the paradigm for two years, we have some suggestions which we hope to work into our future Moot Court activities. First, if possible, it would be wise to assign a lawyer/advisor to work with the prosecution and one to work with the defense team as they are preparing their cases. We have utilized our lawyer/advisors in only two areas of the event--drafting the case and critiquing the event, but we recommend greater use of the lawyer/advisors in the process. For instance, after the case is drafted, the lawyer/advisor could be of great assistance in planning the questioning. We feel that this would enrich and perfect the approaches that our students use. If an attorney is unavailable, we can look to some local law clerks or law students who might be available and interested in the activity.

Furthermore, we hope, in time, to turn over much of the administrative work to an experienced Moot Court debater, freeing the advisors to work more in-depth with persuasive strategies and techniques with the individual debaters. We also envision the possibility for future research projects based upon the verdict sheets that we have collected from the various activities.

We also see merit in holding the same Moot Court for a second or third time, perhaps visiting a nearby university. It seems a great deal of work for a one-time occurrence and a second or third run-through might perfect and improve the courtroom procedures and communication skills if the debaters would utilize suggestions that the attorneys make in the critiquing sessions.

We have always used one of the lawyer/advisors to serve as the judge. We are considering asking a local judge to serve in this capacity. Since he would work daily with the case concepts, a judge could perhaps provide additional resources and expertise.

Besides these suggestions, we are also considering video-taping the Moot Court so that the debaters can evaluate their courtroom style. A video-tape record will also work well as an educational tool for future students. Possibly, the advisor/attorney's critiques could be accompanied by video-taped examples.

CONCLUSION

In conclusion, we are convinced that the Moot Court provides an enriching educational experience for debaters. In addition it is a relatively inexpensive activity which provides visibility for the department on campus. It provides a link between the department and other university disciplines. It provides links to the community through the lawyer/advisors. Perhaps more importantly, it gives undergraduates an opportunity to see communication at work in a real-life setting. As Wenzel says:

> In the area of teaching, it should be obvious that we can use campus and community programs to lead our students to more complete rhetorical competence when they have opportunities to speak in real, public settings. And, indeed, that is being done in many places. More attention to that purpose may be the chief means for keeping superior students interested after they have mastered the dialectical skills of the tournament. And it may be the way to attract currently disinterested students by providing more realistic opportunities.[12]

NOTES

[1]Michael E. Roloff and Gerald R. Miller, Persuasion: New Directions in Theory and Research, (Beverly Hills, California: Sage Publications, 1980), p. 251.

[2]Ibid.

[3]Warren Burger, "The Special Skills of Advocacy," Journal of Contemporary Law, 3, (1977), p. 170. As quoted in Ronald J. Matlon, "Bridging the Gap Between Communication Education and Legal Education," Communication Education, 31, (January, 1982), p. 45.

[4]William Pincus, "Clinical Training in the Law School: A Challenge and a Primer for the Bar and Bar Admission Authorities," St. John's Law Review, 50, (1976), p. 482. As quoted in Matlon, "Bridging the Gap." p. 41.

[5]Elizabeth Walker Stone, "Communication Skills Offerings in American Law Schools." Journal of Legal Education, 29, (1978), p. 242.

[6]Thomas H. Adams, in The Law Schools Look Ahead: 1959 Conference on Legal Education, (Ann Arbor: University of Michigan Law School, 1959), p. 155. As quoted in Matlon, "Bridging the Gap," p. 47.

[7]James H. McBath, "Speech and the Legal Profession," Speech Teacher, 10, (1961), p. 45.

[8]Joseph W. Wenzel, "Campus and Community Programs in Forensics: Needs and Opportunities," Journal of the American Forensics Association, VII, pp. 253-259.

[9]James H. McBath, editor. Argumentation and Debate: Principles and Practices, (New York: Holt, Rinehart and Winston, Inc., 1963), p. 295.

[10]Board of Student Advisors, Harvard Law School, Introduction to Advocacy, (Mineola, New York: The Foundation Press, Inc., 1976).

[11]James Edward Sayer, Argumentation and Debate: Principles and Applications, (Sherman Oaks, California: Alfred Publishing Co., 1980), p. 314.

[12]Wenzel, p. 258.

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AGENDA
MOOT COURT NUMBER ONE
WEDNESDAY, JANUARY 28, 1981
STUDENT CENTER 301-2

I. OPENING OF TRIAL:

A. Bailiff Announces Judge's Arrival
B. Judge gives instructions to the jury
C. Opening Statement by Attorneys

1. Prosecution goes first
2. Defense goes second

II. EXAMINATION OF WITNESSES

A. Prosecution presents witnesses first

1. Susan Lee
2. Reginald Lewis Farnsworth III
3. Captain Agatha Anderson

NOTE: Defense will cross-exam following each witness

B. Defense presents their witnesses
1. Gloria Vanderfeller
2. Niles Maize

NOTE: Prosecution will cross-exam following each witness

III. CLOSING PORTION OF TRIAL

A. Prosecution provides initial closing remarks
B. Defense provides their closing
C. Prosecution closes
D. Judge gives final instructions to jury
E. Jury is sequestered
F. Verdict is announced

IV. POST TRIAL

Advisers will critique the moot court

TIME LIMITS WILL BE IMPOSED AS FOLLOWS:

Opening Remarks - 8 minutes for each side
Cross Examination - 10 minutes total
Examination of opposing witnesses - 5 minutes total
Closing Remarks - 7 minutes

NOTE: A total of thirty minutes is available to each side. They may divide it up as they wish...however, the guidelines provided above may be used as a maximum. If one side only uses 6 minutes for their opening remarks, they will get 2 minutes added to their next area to provide for flexibility.

APPENDIX II

RAPE CASE SUMMARY

On September 13, 1981, Alice May was raped in the Graduate Parking Lot of Bailey University between 7:30 and 8:15 p.m. Miss May reported the rape at 11:43 p.m. Officer Darrow took Miss May by squad car to University Hospital where she was examined and it was certified that completed intercourse had taked place. In a line-up on Sept. 14th, Daniel Wayne was identified by Miss May as her attacker. Wayne was not able to provide an alibi, was arrested and brought to trial.

SLATE OF JURORS

Jury Foreman, Carla Cox

Lou Ann Lowring

Mark Faussett

Matt Zieter

Carole Delahanty

John Rackstrod

Bruce Tierney

Jeff Meyers

24 Jean Phillips

Andy Sawyer

Ron Price

Christie Winston

AGENDA

I. OPENING OF TRIAL

- A. Judge's Arrival--Bailiff, Jeff Evans
- B. Instructions to Jury--Judge, Robert Clamme

II. OPENING STATMENTS (8 minutes)

- A. Prosecution Attorney--Brad Baugh
- B. Defense Attorney--Kelly Dunn

III. EXAMINATION OF WITNESSES

- A. Prosecution (10 minutes)
  1. Tennis Court Witness--Beth Clary
  2. Officer Darrow--Doug Trenfield
  3. Victim--Jenny Oaks
- B. Defense Cross-Examination (5 minutes)
- C. Defense (10 minutes)
  1. Defendant-John Shafer
  2. Track Coach--Randy Richardson
- D. Prosecution Cross-Examination (5 minutes)

IV. CLOSING REMARKS (7 minutes)

- A. Prosecution Attorney--Donnajean Reckelhoff
- B. Defense Attorney--Neal Fraser

V. CLOSING OF TRIAL

- A. Judge's Final Instructions to Jury
- B. Sequestering of the Jury
- C. Announcement of the Verdict

VI. CRITIQUE OF THE MOOT COURT BY LAWYER-ADVISORS

Note About Time Limits: A total of thirty minutes is available to each side. They may divide it up as they wish using the guidelines provided above as a maximum. If one side uses only minutes for their opining remarks, they will get two minutes added to their next area to provide for flexibility.

25

SPECIAL THANKS

Speech and Theatre Department

Dr. Edward S. Strother
Chairman

Dr. David Shepard
Chairman, Rhetoric and Public Address

Ball State Debate Team

Judie Mosier Thorpe
Director

Janice Shaw Crouse
Assistant Director

Lawyer-Advisors

Elizabeth M. Costello
Attorney-at-Law
110 S. Walnut St.
Muncie

Michelle Whiteman Spahr
Attorney-at-Law
Morris, Chaplin and Johnson
1 Virginia Avenue
Indianapolis

Robert A. Clamme
Attorney-at-Law
Prosecuting Attorney
Jay County
Portland

We are especially grateful to the theatre students who gave of their time to portray the victim, defendant, and witnesses.

MOOT COURT NUMBER TWO

The Debate Team
Speech and Theatre Department
Ball State University
Thursday, Nov. 5, 1981
7:00 p.m.
Teacher's College M2

OPINION POLL

MOOT COURT

In order to determine the persuasive elements that the audience and the jury felt decided the guilt or innocence of the defendent, please circle your decision:

I FOUND THE DEFENDENT GUILTY OR NOT GUILTY

THE REASON FOR MY DECISION WAS AS FOLLOWS:

MY MAJOR AT BALL STATE IS _____

NAME OF STUDENT _____

NAME OF INSTRUCTOR _____

CIRCLE ONE: I WAS A MEMBER OF THE JURY OR THE GENERAL AUDIENCE

MOOT COURT NUMBER ONE

SCENARIO

THE BALL STATE DEBATE TEAM
WEDNESDAY
JANUARY 28, 1981
7:00 p.m.

TO THE AUDIENCE:

The moot court you will be seeing is based upon real courtroom procedure. In the interest of time, several aspects that are important to real justice are eliminated. They are as follows: questioning and seating the jury and entering evidence into the record. Our moot court concentrates on the opening statements of both prosecution and defense, the direct and cross examination of witnesses as well as the closing remarks of the defense and prosecution.

The crime and the characters are hypothetical. When members of the moot court created them, they did so with the idea that guilt or innocence is unknown. It will be up to those of you who are selected as a jury to determine if Dean Allen Walters is guilty of theft. Listen carefully to the evidence provided. You will be asked to vote on guilt or innocence and give your reason at the end of the trial.

Essentially, what you need to know to understand the proceedings is as follows: Dean Allen Walters is on trial for theft. He worked as a carpet cleaner for Mid-West Carpet Cleaners in Middletown, a job that he has had for three years. One of his clients is the apartment complex owned by Gloria Vanderfeller. Gloria gives him a master key to enter and clean apartments. On December 24, Susan Lee, an occupant of one of the apartments came home around noon, and all was in order. At 5:30 that evening, she returned and discovered her front door ajar and her stereo and television was missing. Captain Agatha Anderson was called to the scene and conducted an investigation. Anderson discovered several factors existed. The sliding glass door in the rear of the apartment was unlocked, but closed. She dusted for finger prints and discovered that prints of Dean Allen Walters along with those of Ms. Lee were throughout the apartment. Later that evening, an anonymous tip around 11:45pm lead Anderson and her partner to a fence operation on the outskirts of town. The warehouse was empty, but a door was ajar and Anderson and her partner entered to find many stolen items located there. The stereo and television of Ms. Lee were among the items recovered. A dusting of the items discovered that the prints of Dean Allen Walters were located on the television. In addition to this evidence, a friend of Walters testified when he was brought into the police station for questioning that Walters had told him "he intended to make a killing." A warrant for Walters' was issued and Anderson and her partner picked Walters up at his basement apartment on December 24 at 2:35 a.m. Walters claimed he was innocent....and added that he was not the thief. He claimed that he had spent the evening wrapping Christmas presents. It is the desire of the defense attorneys to not call Walters to the stand. The trial you will hear will be developed in the order provided on the back of this page. (Note: See Appendix I)

Scenario
Moot Court Number Two
Ball State Debate Team
Thursday, November 5, 1981
7:00 p.m.

THE FOLLOWING HYPOTHETICAL SITUATION WAS CREATED BY THE MEMBERS OF THE MOOT COURT PROSECUTION AND DEFENSE LAWYERS WITH THE ASSISTANCE OF MOOT COURT ADVISOR, ROBERT CLAMME. A DELIBERATE ATTEMPT WAS MADE TO BALANCE THE CASE IN SUCH A WAY THAT BOTH THE DEFENSE AND THE PROSECUTION SHARED EQUAL BURDENS IN TERMS OF PERSUADING THE JURY.

On September 13, 1981 Alice May was raped in graduate parking lot located at Armayrage Avenue and Magnum Street, north of Bailey University between 7:30 and 8:15 p.m. Miss May did not report the rape until 11:43 p.m. since her glasses were crushed in the attack and it took her several hours to find her way back to her apartment in Inherency Hall.

Police Officer Darrow, who was dispatched to Miss May's residence, a private apartment complex, around midnight, filed the following facts in an Offense Report: Alice May reported to Officer Darrow that she was grabbed from behind, her glasses flew off and were subsequently broken. She described her attacker as wearing shorts and a head-band. She also reported that her rapist had a distinct accent, probably English. Alice May also indicated that her attacker had been scratched badly by the gravel in the parking lot when they struggled.

Following his arrival, at Miss May's apartment, Officer Darrow took Miss May by squad car to University Hospital where she was examined by Dr. Emeritus Emory, who established through medical examination and tests that completed intercourse had taken place. At 2:50 a.m. on 9/14/81 the Offense Report was filed and the following day, Officer Darrow started his investigation.

Officer Darrow discovered that another resident of Inherency Hall, a track team member from New Zealand, Daniel Wayne had been seen by the apartment manager, Dale Donovan at 10:30 p.m. with scraped and bleeding knees. Donovan filed a deposition establishing this fact. Investigation at the tennis court between Inherency Hall and the graduate parking lot established that several witnesses had seen Daniel Wayne run from the court area to the graduate parking lot around 7:20. One witness testified further that Wayne stopped at a drinking fountain and at that time, he did not have any unusual scrathes or injuries.

A line-up was held on September 14,1981, which included Wayne as well as the tennis players and two members of the holding tank at Central Station. Alice May identified Daniel Wayne as her attacker in terms of general description as well as voice identification. Wayne was not able to provide an alibi since he stated that he had been running from 7:00 until 8:00, studied alone from 8:00 to 9:45, and started running again for the second time in one evening around 10:00. He claimed that the scratches were from falling while running.

NOTE: IF YOU ARE INTERESTED IN PARTICIPATING IN ANY FURURE MOOT COURT ACTIVITIES PLEASE SIGN YOUR NAME, ADDRESS AND PHONE NUMVER DURING WINTER QUARTER AND TURN IN THE INFORMATION TO JUDIE THORPE OR JANICE CROUSE, DEPARTMENT OF SPEECH AND THEATRE

NAME_____ PHONE_____

WINTER QUARTER CAMPUS ADDRESS_____

APPENDIX VI

MOOT COURT CHECK LIST

1. Contact Lawyer/Advisors.
2. Issue Call-Out Notice for Participants.
3. Meet with Participants and Lawyer/Advisors to Construct Scenario.
4. Write up Scenario.
5. Assign Participants to Various Roles.
6. Send Flyer to Pre-Law, Political Science, History, and Criminal Justice Classes for Jury Panel Participants.
7. Develop and Type Up Printed Program.
8. Get Design for Cover of Printed Program.
9. Arrange for a Timekeeper for the Moot Court Performance. (Stop Watch, Time Cards, Reserve Seat for Timer.)
10. Copy Polling Form to Tally Votes After the Court and to Keep Track of Attendance for Those Who Want Extra Credit for Attending.
11. Reserve Room and Equipment. (Judge's Gavel, Tables, Podium, Chairs, Microphone, Video Equipment.)
12. Arrange for Publicity. (Posters, Newspaper (campus and town), Notify Colleagues and Other Professors who Might Announce to Classes and Encourage Attendance with Extra Credit.)
13. Have Certificates Designed for Lawyer/Advisors. (Maybe Arrange Gift, Honorarium If Money Is Available)
14. Write Personal Letter of Thank You to Participants.

Ball State University Debate Team

Acknowledges with Appreciation

Presented on this day

For your generous contribution as Advisor for the Moot Court

"The freedom to speak can never be maintained by objecting to interference with the liberty of the press, or printing, or broadcasting, of the screen. It can be maintained only by promoting debate."

Walter Lippman

BALL STATE UNIVERSITY MUNCIE · INDIANA

Director of Debate

Director of Forensics

Chairman of the Department